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Supreme Court of the United States

OCTOBER TERM, 1949

No. 76

TRAVELERS HEALTH ASSOCIATION AND R. E. PRATT, AS TREASURER THEREOF, AND IN HIS PERSONAL CAPACITY, APPELLANTS,

vs.

COMMONWEALTH OF VIRGINIA, AT THE RELATION OF STATE CORPORATION COMMISSION

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

FILED MAY 19, 1949.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND

Record No. 3425

TRAVELERS HEALTH ASSOCIATION and R. E. PRATT, as Treasurer Thereof and in His Personal Capacity, Appellants,

versus

COMMONWEALTH OF VIRGINIA, at the Relation of State Corporation Commission, Appellee

Petition for an Appeal and Supersedeas From an Order of the State Corporation Commission

To the Honorable Justices of the Supreme Court of Appeals of Virginia:

Your Petitioners, Travelers Health Association, a non-profit corporation organized and existing under the laws of the State of Nebraska, and R. E. Pratt, Treasurer of said Association and a resident of the State of Nebraska, respectfully represent that they are aggrieved by a final order entered by the State Corporation Commission on January 5, 1948, whereby said Commission assumed jurisdiction over these Petitioners and entered a cease and desist order against Petitioners, restraining them from soliciting membership certificates of health insurance in this State through the use of the United States mails.

[fol. 2] Your Petitioners are advised that they are entitled, as a matter of right, to have such order reviewed by this Honorable Court, and respectfully ask that such a review be granted.

There is filed herewith a copy of the record in the hearings before the State Corporation Commission, but this petition is not to be regarded as Petitioners' opening brief since such brief will be filed in due course.

STATEMENT OF THE FACTS

The following facts were stipulated between Travelers Health Association and the State Corporation Commission:

"1. Travelers Health Association is a non-profit membership association incorporated for the past forty-two years

under the laws of the State of Nebraska and subject to the supervision of the Insurance Department of the State of Nebraska, having its principal and only office for the transaction of business in Omaha, Nebraska.

"2. Travelers Health Association has not now nor has it ever had any office, officer, official, agent, representative, bank account, or any other real or personal property, tangible or intangible, located in the State of Virginia.

"3. Each of the members of said Association receives by mail from Omaha, Nebraska, when accepted as a member, a membership certificate providing for certain health insurance benefits and requiring the member, from time to time, to forward by mail to Omaha, Nebraska, the actual cost of such protection through the payment of assessments as levied.

"4. Every application for membership is received and acted upon by the Association in Omaha. Every applicant regardless of his place of residence, is elected to membership in the offices of the Association in Omaha. All assessments to cover insurance costs, and all membership fees are payable in Omaha. All claims for insurance benefits are submitted to the Association in Omaha and all insurance benefits are paid from the home office there.

"5. All notices to members are issued from the home office in Omaha, Nebraska, addressed to the members at their respective places of residence throughout the United States, and are then deposited in the United States Post Office in the City of Omaha for transmission through the United States mails to such members.

"6. New members are usually obtained through recommendations of existing members who submit to the Associa- [fol. 3] tion at its home office in Omaha the names of friends and acquaintances believed to be able to qualify for membership.

"7. The Association at Omaha then writes to each such person wherever he may reside, enclosing an application blank and suggesting that he apply for membership forthwith in order to secure the advantages of membership, which include health insurance protection and claim payments when ill. All such letters are transmitted by mail from the United States Post Office in Omaha.

"8. If upon receipt of this letter the proposed applicant is interested, he thereupon fills out the application blank wherever he may reside and sends it by mail or delivers it personally to the home office of the Association in Omaha, where it is received and acted upon.

"9. Since beginning business, Travelers Health Association has solicited and obtained numerous memberships throughout the Commonwealth of Virginia in the manner indicated above. During such periods it has caused many claims to be investigated. Payment of claims has been made by mail from the home office in Omaha. The Association now has approximately eight hundred members (certificates in force) in Virginia.

"10. The only notice received by the respondents of this proceeding was the receipt on May 9, 1947, by registered mail of a copy of the proceeding as instituted, known as Case No. 8816, dated May 5, 1947.

"11. R. E. Pratt resides in Omaha, Nebraska."

The Petitioners entered a special appearance in opposition to the jurisdiction of the State Corporation Commission and that issue was argued by counsel before the Commission based upon the foregoing stipulation of facts, upon consideration whereof the Commission was of the opinion that jurisdiction of the Commission was established, and that the evidence as stipulated justified the conclusion that the activities of the Petitioners were contrary to the laws of the State of Virginia; whereupon an order was entered restraining Petitioners, through the United States mails or otherwise, from offering or promoting contracts of insurance in the State of Virginia.

Assignments of Error

Your Petitioners respectfully assign as error the following action by the Commission:

1. The decision of the Commission, proceeding under the Virginia Securities Act, Section 3848(52) of the Code of Vir- [fol. 4] ginia (1942) that it could assume and exercise jurisdiction over these non-resident Petitioners by substituted service of process in the form of notice sent by registered United States mails.

2. The decision of the Commission that the corporate Petitioner had committed acts in the State of Virginia in furtherance of the sale of its membership certificates.

3. The order of the Commission, proceeding under the Virginia Securities Act, Section 3848(52) of the Code of Virginia (1942), enjoining the non-resident Petitioners from the use of the United States mails, by means of intrastate or interstate communication, for the purpose of furthering or promoting contracts of insurance or indemnity in the State of Virginia.

4. The decision of the Commission that the enforcement of the aforesaid statute did not constitute an attempted regulation of the mails and Post Office Department of the United States, the right to regulate which is expressly and exclusively delegated to Congress by Section 8, Article 1, of the Constitution of the United States.

5. The decision of the Commission that assumption of jurisdiction over these non-resident Petitioners by substituted service of process, pursuant to the Virginia Securities Act, Section 3848(52) of the Virginia Code, did not deny Petitioners their rights without due process of law, and that enforcement of the aforesaid statute was no abridgement of the privileges and immunities of the non-resident Petitioners, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

Statement of Position

Petitioners will in due course file their brief wherein their position with respect to the foregoing assignments of error will be fully argued and the authorities discussed. No extended argument will therefore be presented at this time. Briefly stated, however, the position of Petitioners is as follows:

1. Petitioners contend that the alleged service of process in this proceeding by registered United States mail was wholly void and that it conferred no jurisdiction upon the Commonwealth of Virginia or its agencies over the persons of the Petitioners. The action being one to enjoin the *personal activities* of the corporate an individual Petitioners was a proceeding *in personam* in which personal service was essential. This was not had and the Petitioners therefore

[fol. 5] contend that the attempted substituted service violated their rights under the due process clause of the Federal Constitution.

2. Admitting the right of imposition of conditions by a State upon foreign corporations who desire to enter sovereign boundaries, it is beyond its authority and power to regulate the activities of any individual or corporation beyond its territorial limits. The Petitioners further contend that Section 3848(52) of the Virginia Code, permitting service of process in an action "*in personam*" by mail beyond the territorial jurisdiction of the State is unconstitutional and void, and that any order affecting the person of the Petitioners by such attempted service and made pursuant thereto is unconstitutional and void.

3. Petitioners do not deny that, where a foreign corporation is carrying on a business and committing acts within the territorial limits of a State through its authorized agents, substituted service of process may be sufficient to confer jurisdiction where otherwise no jurisdiction would exist. But Petitioner corporation has never had any office, agent, official or property of any kind located in the Commonwealth of Virginia, and this fact was so stipulated between the parties to this action prior to the hearing before the Commission. The corporate Petitioner further contends that the mere depositing of letters in the United States Post Office in Nebraska, where it is incorporated and has its only office, cannot be considered the commission of acts or the operation of its business in the State of Virginia sufficient to confer jurisdiction upon Virginia courts by the method of substituted service of process.

4. The State Corporation Commission, pursuant to Section 3848(52) of the Virginia Code, has enjoined the Petitioners from advertising from within or from without the State through the use of *the mails* or otherwise, by intrastate or *interstate* communication, their contracts of insurance in the State of Virginia. It is Petitioners' contention that no State, nor instrumentality thereof, can constitutionally issue or enforce such an injunction inasmuch as it results in an indirect regulation of the use of the United States mails, the control and regulation of which is in the sole and exclusive power of Congress. The Petitioners are not unmindful of the scope of the "police powers" of this Commonwealth, but they earnestly submit that such

a power cannot be extended to encompass unconstitutional legislation.

Wherefore, Petitioners respectfully pray that an appeal and *supersedeas* be awarded them and that this Honorable [fol. 6] Court review and reverse the action of the State Corporation Commission, and that said cease and desist order by the State Corporation Commission be annulled and dissolved.

Copies of this petition were duly delivered to J. Lindsay Almond, Attorney General of the Commonwealth of Virginia, and to Blake T. Newton, of counsel for the Commonwealth in this case, on the 4th day of May, 1948.

Since Section 3734 of the Code (1942) provides for an appeal of right from the order complained of, counsel for petitioners do not desire to supplement what has been said in this petition by an oral statement of petitioners' reasons for seeking an appeal.

Respectfully submitted,

Travelers Health Association and R. E. Pratt, as Treasurer thereof and in his personal capacity,
By Hunton, Williams, Anderson, Gay & Moore,
Counsel.

Thomas B. Gay, Of Counsel.

I, Thomas B. Gay, the undersigned counsel, practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in my opinion the rulings and order of the State Corporation Commission in the above case are erroneous, and that said order should be reviewed and dissolved.

Given under my hand this 4 day of May, 1948.

Thomas B. Gay.

Received May 4, 1948.

M. B. Watts, Clerk.

Appeal and *supersedeas* awarded. Bond $300.

Willis D. Miller.

May 17, 1948.
Rec'd May 17, 1948.

M. B. W.

[fol. 7] BEFORE STATE CORPORATION COMMISSION

Commonwealth of Virginia

At Richmond, May 5, 1947.

COMMONWEALTH OF VIRGINIA, at the relation of State Corporation Commission,

v.

TRAVELERS HEALTH ASSOCIATION and R. E. PRATT, as Treasurer Thereof, and in His Personal Capacity

Case No. 8816

ORDER INSTITUTING PROCEEDINGS, ETC.

Upon bases of facts gained from information received, and from the records of the Commission;

It appears, and it is charged, that the respondents enumerated in caption hereto have, within the State of Virginia, offered for sale, advertised for sale, or otherwise promoted or assisted, participated in or acted in furtherance of, the offer, advertisement or sale, or have otherwise promoted the distribution of, certain securities, represented to be contracts of insurance and/or indemnity in Travelers Health Association which, if a corporation, is chartered under the laws of some state other than Virginia, presumably of Nebraska; that the said Travelers Health Association appears to be an insurance company doing in Virginia only a mail order business which is not required to obtain a license under the Virginia Insurance Laws, but which by virtue of subdivision (p) of Section 3 of the Virginia Securities Law, is required to obtain an authorization under the said law; that, without first having qualified under the Virginia Securities Law, the said respondents offered for sale in Virginia securities, consisting of contracts of insurance and/or indemnity, amongst others not known to the Commission but well known to the respondents herein, to one William C. King, as appears from documentary data and reliable information; and that the said offers and sales have been, and are, in contravention of the said Virginia Securities Law; therefore,

The State Corporation Commission, in pursuance of, and in accordance with, the provisions of Section 6 of

the Virginia Securities Law, does hereby give at least ten [fol. 8] days' notice, and an opportunity to be heard, upon the question of whether or not a cease and desist order, in the nature of a permanent injunction, or restraining order, should be issued against Travelers Health Association, of Omaha, Nebraska, and against R. E. Pratt, as Treasurer thereof and in his personal capacity, at the address of each as shown in the record herein, and/or against either of them, ordering them, and/or either of both of them, to cease and desist, personally and/or through any employee, agent or representative, and/or through the medium of any advertisement, from within or without the State, through the mails or otherwise, from offering, advertising, promoting, selling, assisting or participating in, or acting in furtherance of, the offer, advertisement, sale and/or promotion in Virginia of contracts of insurance and/or indemnity, unless and until otherwise ordered, or unless and until permit or authorization shall have been issued by the State Corporation Commission according to law, and such cease and desist order duly vacated according to law;

It is further ordered, that a proceeding under Section 6 of the Virginia Securities Law be, and it hereby is, instituted, assigned Case No. 8816, and docketed; that Travelers Health Association and R. E. Pratt, as Treasurer thereof, and in his personal capacity, be made parties hereto; that process issue, and together with attested copies of this order, be served according to law as provided by Section 6 of the Virginia Securities Law, summoning the said respondents and each of them to appear at the courtroom of the State Corporation Commission, State Office Building, Richmond, Virginia, at 10:00 A. M., on the 19th day of May, 1947, and show cause, by answer or otherwise, if they, or either of them, can, why a cease and desist order, in the nature of a permanent injunction or restraining order, should not be issued against them, or either of them, in their several capacities, as may be proper, ordering them, or either of them, as may be found proper by the Commission, to cease and desist, jointly and severally, through representative or representatives, agent or agents, and/or through medium of advertisement from within or without the State, through the mails, or other media of communication, inter- or intra-state, from offering, advertising, selling, promoting, assisting or participating in, or acting in

furtherance of, the offer, advertisement, sale or promotion of the contracts issued by Travelers Health Association, [fol. 9] consisting of contracts of insurance or indemnity, and being offered and/or sold by, and/or on behalf of, the said company; and

It appearing that Travelers Health Association and R. E. Pratt are not residents of, and are not located in, and are not licensed to transact business in, the State of Virginia, and there being no way to obtain direct personal service on them or either of them;

It is further ordered, that attested copies of this order, upon which this proceeding is based and proposed, together with process hereinbefore directed to be served, be served, for the purpose of obtaining jurisdiction by service, as prescribed by Section 6 of the Virginia Securities Law, by forwarding, by registered mail, return receipt demanded, to their respective last known addresses, to Travelers Health Association and to R. E. Pratt, in accordance with the provisions of Section 6 of the Virginia Securities Law for such cases made and provided; and

It is further ordered, that this proceeding be placed on a secret docket and not made public until after the preliminary hearing, unless the Commission shall determine and order that it shall be kept on a secret docket after the preliminary hearing, as may be done in the discretion of the Commission, in accordance with the provisions of the last paragraph of Chapter 529, Section 6, Acts 1928, as amended.

BEFORE STATE CORPORATION COMMISSION

Commonwealth of Virginia

[Title omitted]

NOTICE OF SPECIAL APPEARANCE FOR DEFENDANTS

SIRS:

Please take notice that we appear specially for the defendants in the above entitled proceeding, for the sole purpose of objecting to the alleged jurisdiction of the Commonwealth of Virginia and of its State Corporation Commis- [fol. 10] sion, and of moving to set aside and quash service

of summons alleged to have been made upon said defendants, and for no other purpose.

Dated the 13th day of May, 1947.

Brown, Hubbard, Felt & Fuller, Attorneys for Defendants, Office and Post-Office Address, 814 First National Bank Bldg., Utica, New York.

To: State Corporation Commission, and N. W. Atkinson, Clerk of the Commission, State Office Building, Richmond, Virginia.

BEFORE STATE CORPORATION COMMISSION

Transcript of Hearing

Commissioner Downs: Proceed, Mr. King.

Mr. King: May it please the Commission, this is a cease and desist proceeding brought under Section 6 of the Virginia Securities Law and placed on the secret docket for the reason that the Securities Division, finding that there was quite a large amount of business done in this State by this Company, thought it best to have it on a secret docket until the Commission could decide it. Mr. Hubbard has filed a special appearance which will be found in the case jacket which Your Honors have, and in continuing the case a few days ago, I made a particular note of the filing that he was here on special appearance, and that is the way he is here today.

Mr. Hubbard, representing the respondents, and I have agreed to a Stipulation of Facts.

I think it well to put in the record the registered notices which we used as service in this case and service was had on all three of them, the Travelers Health Association, R. E. Pratt as Treasurer and R. E. Pratt personally. Here are the three notices I want to put in the record, and although we have stipulated the facts, I don't suppose Mr. Hubbard will object to my putting in some of the papers that came out from his Company. They were sent to me personally. I don't know how they got my name. They have had my name for sometime and I have been receiving literature from them, but only since coming to the State Corporation Com-
[fol. 11] mission have I known the purport of these things

by a company not licensed or claiming to be licensed in the State.

I will read the Stipulation of Facts and then I think the proper procedure will be for Mr. Hubbard to argue his special appearance. Of course Section 18 puts the burden on Mr. Hubbard anyway, and since he filed this special appearance, it is up to him to argue that question.

The Stipulation of Facts is as follows:

STIPULATION OF FACTS

"The following facts are hereby stipulated between Moses G. Hubbard, Jr., counsel for Travelers Health Association, et als., and William C. King, Director, Securities Division, State Corporation Commission:

"1. The Travelers Health Association is a non-profit membership association incorporated for the past forty-two years under the laws of the State of Nebraska and subject to the supervision of the Insurance Department of the State of Nebraska, having its principal and only office for the transaction of business in Omaha, Nebraska.

"2. The Travelers Health Association has not now, nor has it ever had any office, officer, official, agent, representative, bank account nor any other real or personal property, tangible or intangible, located in the State of Virginia.

"3. Each of the members of said Association receives by mail from Omaha, Nebraska, when accepted as a member, a membership certificate, providing for certain health insurance benefits, and requiring the member from time to time to forward by mail to Omaha, Nebraska, the actual cost of such protection through the payment of assessments as levied.

"4. Every application for membership is received and acted upon by the Association at Omaha. Every applicant, regardless of his place of residence, is elected to membership at the offices of the Association in Omaha. All assessments to cover insurance cost and all membership fees are payable in Omaha. All claims for insurance benefits are submitted to the Association in Omaha and all insurance benefits are paid from the Home Office there.

"5. All notices to members are issued from the Home Office in Omaha, Nebraska, addressed to the members at

their respective places of residence throughout the United States, and are then deposited in the United States Post [fol. 12] Office in the City of Omaha for transmission through the United States mail to such members.

"6. New members are usually obtained through the recommendations of existing members who submit to the Association at its Home Office in Omaha, the names of friends and acquaintances believed to be able to qualify for membership.

"7. The Association, at Omaha, then writes to each such person, wherever he may reside, inclosing an application blank and suggestion that he apply for membership forthwith in order to secure the advantages of membership which include health insurance protection and claim payments when ill. All such letters are transmitted by mail from the United States Post Office in Omaha.

"8. If upon the receipt of this letter the proposed applicant is interested, he thereupon fills out the application blank, wherever he may reside, and sends it by mail or delivers it personally to the Home Office of the Association in Omaha, where it is received and acted upon.

"9. Since beginning business Travelers Health Association has solicited and obtained numerous memberships throughout the Commonwealth of Virginia in the manner indicated above. During such period it has caused many claims to be investigated. Payment of claims has been made by mail from the Home Office in Omaha. The Association now has approximately 800 members (Certificates in force) in Virginia.

"10. That the only notice received by the respondents of this proceeding was receipt on May 9, 1947, by registered mail of a copy of the proceedings as instituted, known as Case No. 8816, dated May 5, 1947.

"11. R. E. Pratt resides in Omaha, Nebraska.

(Signed) Moses G. Hubbard, Jr., William C. King."

At Richmond, September 2, 1947.

COMMONWEALTH OF VIRGINIA, at the Relation of State Corporation Commission,

v.

TRAVELERS HEALTH ASSOCIATION and R. E. PRATT, as Treasurer thereof, and in his personal capacity

[fol. 13] Case No. 8816.

STIPULATION OF FACTS.

The following facts are hereby stipulated between Moses G. Hubbard, Jr., counsel for Travelers Health Association, et als., and William C. King, Director, Securities Division, State Corporation Commission:

(1) The Travelers Health Association is a non-profit membership association incorporated for the past forty-two years under the laws of the State of Nebraska and subject to the supervision of the Insurance Department of the State of Nebraska, having its principal and only office for the transaction of business in Omaha, Nebraska.

(2) The Travelers Health Association has not now, nor has it ever had any office, officer, official, agent, representative, bank account nor any other real or personal property, tangible or intangible, located in the State of Virginia.

(3) Each of the members of said Association receives by mail from Omaha, Nebraska, when accepted as a member, a membership certificate providing for certain health insurance benefits, and requiring the member from time to time to forward by mail to Omaha, Nebraska, the actual cost of such protection through the payment of assessments as levied.

(4) Every application for membership is received and acted upon by the Association at Omaha. Every applicant, regardless of his place of residence, is elected to membership at the offices of the Association in Omaha. All assessments to cover insurance cost and all membership fees are payable in Omaha. All claims for insurance benefits are submitted to the Association in Omaha and all insurance benefits are paid from the Home Office there.

(5) All notices to members are issued from the Home Office in Omaha, Nebraska, addressed to the members at their

respective places of residence throughout the United States, and are then deposited in the United States Post Office in the City of Omaha for transmission through the United States mail to such members.

(6) New members are usually obtained through the recommendations of existing members who submit to the Association at its Home Office in Omaha, the names of friends and acquaintances believed to be able to qualify for membership.

[fol. 14] (7) The Association, at Omaha, then writes to each such person, wherever he may reside, enclosing an application blank and suggesting that he apply for membership forthwith in order to secure the advantages of membership which include health insurance protection and claim payments when ill. All such letters are transmitted by mail from the United States Post Office in Omaha.

(8) If upon the receipt of this letter the proposed applicant is interested, he thereupon fills out the application blank, wherever he may reside, and sends it by mail or delivers it personally to the Home Office of the Association in Omaha, where it is received and acted upon.

(9) Since beginning business Travelers Health Association has solicited and obtained numerous memberships throughout the Commonwealth of Virginia in the manner indicated above. During such period it has caused many claims to be investigated. Payment of claims has been made by mail from the Home Office in Omaha. The Association now has approximately 800 members (Certificates in force) in Virginia.

(10) That the only notice received by the respondents of this proceeding was receipt on May 9, 1947, by registered mail of a copy of the proceeding as instituted, known as Case No. 8816, dated May 5, 1947.

(11) R. E. Pratt resides in Omaha, Nebraska.

Moses G. Hubbard, Jr., William C. King.

BEFORE STATE CORPORATION COMMISSION

at Richmond, January 5, 1948.

COMMONWEALTH OF VIRGINIA, at the relation of State Corporation Commission,

v.

TRAVELERS HEALTH ASSOCIATION and R. E. PRATT, as Treasurer thereof, and in his personal capacity

Case No. 8816

CEASE AND DESIST ORDER, IN THE NATURE OF A PERMANENT INJUNCTION, UNDER SECTION 6 OF THE VIRGINIA SECURITIES LAW

[fol. 15] This matter, which was instituted under, and in pursuance of, provisions of Section 6 of the Virginia Securities Law, by order entered herein under date of May 5, 1947, and had been continued from time to time by orders of continuance herein, came, in pursuance of latest order of continuance entered on July 28, 1947, on September 18, 1947, for hearing and consideration, and having been fully heard, was taken under advisement, and now comes on this day for final hearing and consideration, upon the order herein instituting this proceeding and constituting statement of facts and charges herein; upon the special appearance of the respondents herein, by Counsel; upon the appearance of the Director of the Securities Division; upon the record of issuance, forwarding by registered mail, return receipt demanded, and service, respectively, of process and notices, and of copies of said order entered herein May 5, 1947, instituting proceeding; upon the records of registry return receipt cards; upon stipulation of facts, dated September 2, 1947, and signed by Moses G. Hubbard, Jr., and William C. King, filed herein at the hearing hereof; upon exhibits filed herein, as same are identified by the Bailiff of the Commission and as appearing in the transcript of the proceedings had September 18, 1947, as aforesaid; upon the transcript by the Reporter of the Commission of proceedings before the Commission on the day aforesaid; upon the entire record in this proceeding; and upon written and oral argument of Counsel;

Upon consideration whereof, the State Corporation Commission is of opinion that the evidence of record herein establishes the jurisdiction of the Commission, under Section 6 of the Virginia Securities Law, to proceed to determine whether a cease and desist order, in the nature of a permanent injunction, should issue; that the evidence herein and the entire record sustain, in all substantial and requisite respects, the allegations of facts and charges made in the order herein of May 5, 1947, in its character as a statement of facts and charges; that the evidence in the record herein sustains the conclusion that the respondents herein, Travelers Health Association, in its corporate capacity and through its duly constituted officers and agents, and R. E. Pratt, as Treasurer of Travelers Health Association and through his respective duly constituted agents and representatives for such purposes, and in his personal capacity, without having previously complied with the requisite and applicable laws of the State of Virginia, have been engaged [fol. 16] in the conduct of an insurance business, and in the conduct of such business have solicited of and have issued to citizens of and residents in the State of Virginia membership certificates, and have otherwise offered for sale, advertised for sale, promoted, sold, disposed of, and distributed to residents of this Sate, such membership certificates, providing for certain health insurance benefits, through the mails, according to customary and usual practice in the conduct of such type of insurance business, and that the said parties respondent have, severally, in conjunction, and in succession, and through existing members, residents of the Commonwealth of Virginia, according to customary and usual practice in the conduct of such type of insurance business, thus committed acts in furtherance of the sale, and otherwise promoted the sale in Virginia, through medium of the United States mails, of securities within the definition and meaning of the term "securities," as used in the Virginia Securities Law; and that it is apparent from the evidence and the entire record herein, that at the time of instituting the proceeding it was proposed and intended by the said respondents, and each of them, to continue such activities in connection with such securities, as so defined; that such activities in connection with such securities, as so defined, in accordance with the practices which had been pursued for many years and were being

pursued at the time of the institution of this proceeding, would be contrary to the law and statutes of Virginia in force, and from time to time enacted for the protection of the citizens of Virginia in connection with the solicitation of insurance contracts and the issuing of policies of insurance, constituting, for the purpose of this proceeding, securities, as defined in the said Securities Law; and, therefore, that, in accordance with the provisions of the said Securities Law, particularly the provisions of Section 6 thereof, a cease and desist order, in the nature of a permanent injunction or restraining order, against Travelers Health Association, in its corporate capacity, and against R. E. Pratt, as Treasurer of Travelers Health Association, aforesaid, and in his personal capacity, jointly and severally, or through agents and/or representatives, by direct, personal solicitation, and/or by any means and/or media of communication, whether intra- or inter-state, should be issued, as in the ordering part hereinafter more in detail set forth; therefore,

It is adjudged, ordered and decreed, That Travelers Health Association and R. E. Pratt, as Treasurer thereof, [fol. 17] and in his personal capacity, be, and they hereby are, directed to cease and desist, and that they be, and they thereby are, enjoined and restrained, until the further order of the Commission to the contrary, personally, and/or through any employee, agent, or representative, and/or through medium of any advertisement from within or from without the State, and/or through the mails or otherwise, by intra- or inter-state communication, from offering, advertising, promoting, selling, assisting or participating in or acting in furtherance of, the offer, advertisement, sale and/or promotion in Virginia of contracts of insurance and/or indemnity, unless and until otherwise ordered, or unless and until permit or authorization by the State Corporation Commission shall have been issued according to law, or unless and until qualification shall have been effected under the Insurance Laws, and until this order to cease and desist shall have been duly vacated according to law;

It is further ordered, There appearing nothing further to be done in this cause, that the same be, and hereby is, dismissed from the docket of the Commission and the papers placed in the file for ended causes, but that leave be, and hereby is, reserved to the parties hereto, upon motion and

good cause shown, or to the Commission of its own motion, to reinstate the case upon the docket;

It is further ordered, That attested copies hereof be forwarded or delivered to the respondents herein, care and attention of Counsel, to Counsel for files of Counsel, and to the Director of the Securities Division, respectively.

BEFORE STATE CORPORATION COMMISSION

[Title omitted]

ORDER RE ORIGINAL EXHIBITS—May 3, 1948

It having been stipulated and agreed between counsel [fol. 18] representing the Commonwealth and the respondent that the original exhibits need not be copied into the record but may be certified to the Supreme Court of Appeals of Virginia and that they shall not be printed but may be used at the hearing on appeal;

It is hereby ordered that the following original exhibits be certified to the Supreme Court of Appeals with the transcript of the record as exhibits in the matter of Commonwealth of Virginia at the relation of State Corporation Commission v. Travelers Health Association and R. E. Pratt, as Treasurer thereof, and in his personal capacity, for use by the Supreme Court upon appeal, to be returned to the Commission upon the completion of such use, to-wit:

Exhibit No. 1, copy of letters of transmittal of summons and order and registry receipts therefor.

Exhibit No. 2, letter received by William C. King and printed matter enclosed therewith.

BEFORE STATE CORPORATION COMMISSION

OPINION: DOWNS, COMMISSIONER

On May 5, 1947, upon the basis of information supplied by William C. King, a resident of the state, and by the records in the several departments of the Commission, an order was entered by the Commission, which order constituted a statement of facts and charges upon which this

action was proposed and directed the respondents to appear on the 19th day of May, 1947, at the Courtroom of the Commission and show cause why a cease and desist order should not be entered, all in accordance with the provisions of Section 6 of the Virginia Securities Law (Chapter 408, Acts of 1918, as from time to time amended). Since the activities complained of were by mail from beyond the limits of the state, the order in compliance with the terms of the statute directed that jurisdiction be obtained by giving ten days' notice by registered mail, return receipt demanded, to the addresses of the respondents beyond the limits of the state. The order further directed that the proceeding be placed on the secret docket of the Commission in accordance with the discretionary power vested in the Commission by Section 6, aforesaid.

The registry receipt cards evidencing receipt by respondents of the notice and order, aforesaid, were duly received in the Clerk's Office of the Commission on the 12th day of [fol. 19] May, 1947. The proceeding, at the request of counsel for the respondents, was continued from time to time and finally came on for hearing on September 18, 1947. At this time a stipulation of facts was filed by the parties (See Record, page 10). Counsel for the respondents, at the bar of the Commission, admitted the receipt of actual notice by his clients and it appears that the procedure, directed by the statute, was strictly followed throughout. Likewise, it does not appear that the charges contained in the Commission's order of May 5, 1947, aforesaid, have been denied. Indeed, it appears from a consideration of the Stipulation of Facts, *supra*, that such charges have, in all substantial respects, been admitted.

There has been no effort to deny that the respondents, through medium of the mails from beyond the limits of the State, have offered for sale, advertised for sale, or otherwise promoted or assisted, participated in or acted in furtherance of the offer, advertisement and/or sale of membership certificates constituting contracts of insurance and/or of indemnity in Travelers Health Association, within this state, to residents of this state. No claim is made that such membership certificates do not constitute securities, as defined by Section 2 of the Virginia Securities Law, or that the activities of the respondents are not contrary to the letter and intendment of the statute. In effect, we are told that though the action has been brought in strict

accordance with the Statute and that the facts alleged are true, we are without jurisdiction to act by reason of certain supervening constitutional prohibitions which operate to avoid the proceeding. These contentions are based on the "privileges and immunities" and "due process" clauses of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 8, Clause 7, thereof, granting Congress the power to establish post offices and post roads. We have carefully analyzed the position taken by the respondents, as the same has been set forth in oral argument and written Brief, and we are convinced that the principles of constitutional law invoked by them are inappropriate and have no application to the type of proceeding with which we are concerned in this case. It is observed that the respondents have devoted a considerable portion of their argument to the question as to whether or not Travelers Health Association is doing business in this state, the term "doing business" being considered in its technical limited sense. Respondents rely on the fact that their contacts with citizens of Virginia are by mail, that they are not doing business in Virginia and that they do not enter Virginia either personally or by agents. In [fol. 20] setting up this defense they lose sight of the nature of this action. They are not charged with doing business in Virginia but with offering and advertising for sale and promoting the sale of insurance contracts in Virginia by mail and the action is to foreclose them from these activities. Whether the action will suffice to actually stop them is beside the point. It will suffice to put them on notice of pertinent laws of Virginia, to give them an opportunity to be heard and the state an opportunity to determine the facts, and, if, after hearing, a cease and desist order is issued, the Commission will then be authorized to give such publicity to the order as it sees fit for the "information and protection of the public." (Section 6, Virginia Securities Law, *supra.*)

The legality of notice, *per se*, to support the proceeding is disputed. We do not believe that a sovereign state is powerless to protect its public against activities of the respondents and others similarly situated merely because they keep themselves outside the jurisdiction of the state, with the result that technical process may not be served. So far as the issues in this case are concerned, there is no need for technical process. That which the respondents call

"process" may be regarded, and is by Section 6 of the Securities Law referred to, as "notice" of the pendency of this proceeding.

The statement of a New Jersey court in a case dealing with a similar contention is pertinent to our discussion of this issue. That court said:

"So far as the present issues go there was no need for technical process; that which is called process may be regarded merely as statutory notice that the defendants could not do business here unless they complied with the regulatory requirements. The question of what character of notice of the restraint would lay the individual open to punishment under contempt proceedings or otherwise for disobedience is not before us." (*Wilentz* v. *Edwards*, 36 A. 2nd 423, 426, 134 N. J. Eq. 522.)

In the case of *Stevens* v. *Television, Inc.*, 162 A. 248, 111 N. J. Eq. 306, wherein the individual defendants were served by registered mail, forwarded to addresses beyond the boundaries of New Jersey, the court said in answer to an argument similar to that presented by the respondents here:

"The argument is that the suit is *in personam* and that [fol. 21] there can be no personal judgment without personal service within the state. As a general proposition the legal principle is correctly stated. *Pennoyer* v. *Neff*, 95 U. S. 714, 24 L. Ed. 565. But the Fourteenth Amendment, which declares that no state shall deprive any person of life, liberty, or property without due process of law, is not invaded; * * * This is not a case seeking a personal recovery against the defendants; it is to foreclose them * * *. The statutory process puts them on notice. They have their choice of appearing and proving their innocence or the consequences, by staying away. They may submit to our jurisdiction or decline; in either event they will be estopped from denying it.

"That the state has the power to ordain against imposition in the sales of fraudulently represented securities is established law * * *. That it may prescribe the means of protection and the methods of enforcing them necessarily flows from the power to decree and the physical power to enforce its decree. Substituted service—with actual notice—is a valid exercise of the police powers and con-

sistent with due process of law provision of the Federal Constitution.

* * * * * * *

"Under the Blue Sky Law and duty of forwarding the process by mail is imposed upon the Attorney General. In substantial legal effect, the methods of service are the same except one is direct, the other indirect."

Again in *Wilentz* v. *Edwards, supra,* which case arose under the New Jersey Securities Law and provided for service much the same as that which is questioned in this case and in which case the court held that actions of this character were not within the class of actions *in personam,* which, under the doctrine of *Pennoyer* v. *Neff,* 95 U. S. 714, 24 L. Ed. 565, must be accompanied, if against a non-resident, by personal service of process within the jurisdiction. In reaching this conclusion the court stated:

"The terms *in personam* and *in rem* came into our jurisprudence from the civil or Roman law where they seem to have been comprehensive and to have been always used in contradistinction to each other. They are of importance in [fol. 22] our legal system in determining the character of process necessary to institute suit; and here, too, the effort has been to maintain a sharp distinction. But nice accuracy has more than once yielded to the exigencies of a developing jurisprudence, and that which is not strictly a 'thing' has nevertheless been given the significance thereof in order to keep the power of the law abreast of changing conditions."

An appropriate discussion of this same principle is found in *International Shoe Company* v. *State of Washington,* 326 U. S. 310, 316, 90 L. Ed. 95, 101-2. Counsel for the respondents, in asserting that a conflict exists between the procedure outlined in Section 6 of the Virginia Securities Law and well-recognized constitutional principles, in our opinion, loses sight of the supervening fact that the action under consideration has as its object the protection which a sovereign state may afford its citizens against fraud or imposition, actual or potential.

In *Wuchter* v. *Pizzutti* (1928), 276 U. S. 13, 24, 72 L. Ed. 446, 451, the court said:

"These cases (referring to several cases previously cited) and others indicate a general trend of authority toward sus-

taining the validity of service of process, if the statutory provisions in themselves indicate that there is reasonable probability that if the statutes are complied with, the defendant will receive actual notice, and that is the principle that we think should apply here."

It has been strenuously argued that this proceeding is a penal one and that all rules in respect of penal proceedings should apply with full force. In presenting the view that this action is penal, as distinguished from remedial, respondents have gone beyond the limits of the section under which this case proceeds and have pointed to the terms of Sections 15 and 17. Neither of these sections are involved here and it will be time enough to determine the questions raised by the respondents if and when actions are laid under either one of the sections. No word found in or inference derived from Section 6, aforesaid, may properly, in our judgment, be said to impose penalties upon the respondents. It should be pointed out that the Legislature, in order that all question as to the nature of the act might be obviated, has declared in Section 20 thereof: "This act is hereby [fol. 23] declared to be remedial, except when clearly criminal or penal, and, subject to any applicable constitutional limitations, shall be liberally construed to effect its manifest objects and purposes, * * *."

If we are to agree with respondents, we must accept that the Commonwealth of Virginia cannot, because of provisions of the Federal Constitution, or because of principles governing freedom of the mails, offset, subject to practical limitations and in the only manner available, namely, through medium of publicity, an interstate mail campaign, which contravenes its policy, its laws, and the welfare and interest of its people by a proceeding based upon the same means of communication. By so agreeing, we must accept that our dual form of government, the integrity and sovereignty of the states, and the provisions of the Constitution of the United States enacted for the protection of the Federal Government and the people as a whole—in short, all these salutary provisions and principles—may become weapons in the hands of the lawless and the unscrupulous and could be perverted to the distinct detriment of the people of any state without any corresponding benefit to the people of the Country as a whole, or to the benefit of the people, generally, of any other state.

The gist of the position of the respondents is that, because of the giving of notice, as stated by them, only by mail, the Commonwealth of Virginia is powerless to prescribe a means, after affording every reasonable opportunity for actual notice and to be heard, to prevent an absolute contravention and nullification of laws enacted in pursuance of sound and well-settled principles of public policy, clearly within the scope of the police power of the state, provided for the reasonable protection of its citizens. Such a principle of law, involving, as it would, invasion of the reserved and inherent police power of the states, would pervert the provisions of the Constitution of the United States from their appropriate and proper purpose as a means of protecting and vindicating the paramount powers of the Federal Government into instrumentalities for the subversion of, and infringement upon, inherent and essential functions of the States.

We have given careful consideration to the arguments of counsel for the respondents but we cannot agree that the familiar principles of constitutional law, upon which such arguments depend, can be employed in this proceeding in a manner calculated to undermine its salutary purposes. Section 6 of the law has gone farther than the demands of "due process" require. The notice given is provided by the statute, not under the compulsion of the due process clause [fol. 24] but actually as a matter of grace and is intended merely to apprise the respondents of the pendency of the proceeding and of the opportunity afforded them to appear and be heard. They are free to make an election to appear or they may stay away. In statutes of this character, wherein the appropriate exercise of the police power of the State is involved, it appears that even provisions for hearing are matters of grace, for a state has not only the right but is charged with the duty to warn its citizens that an activity is being carried on in violation of its laws and without regard for safeguards and minimum standards prescribed by such laws which its people have come to rely upon and upon which they have a right to rely. That such warning may be given or that remedial action may be taken promptly upon receipt of knowledge of such activity and without necessity of notice or hearing, if such is necessary to safegard the health, safety or welfare of the public can no longer be denied. See *People* v. *Anderson*, 189 N. E. 338; *The City of Cincinnati* v. *The Cincinnati, Lebanon & North-*

ern Ry. Co., 4 Ohio Appellate Reporters 443; *Creaghan* v. *Mayor, etc., of Baltimore*, 104 A. 180. Accordingly, it is plain that the state may, in the reasonable exercise of its police power, act summarily in matters affecting the health, safety and general welfare of its citizens to the end that injury be forestalled. That the Virginia Securities Law is property classified as a police measure cannot be disputed, and that the primary purpose of Section 6, under circumstances such as are here presented, is to notify the public of Virginia to beware of such offerings, is not open to serious question. Notwithstanding these facts, the Legislature, out of regard for the far-reaching and irreparable consequences which might attend more summary action against enterprises dealing in securities which, by their very nature, are extremely sensitive to publicity and knowing that such publicity might be as deleterious to the public as to the enterprise proceeded against, saw fit to provide an orderly procedure which would guarantee action only after notice and an opportunity to be heard. Thus it may be seen that here we are dealing not with a breach of the constitutional guaranties of due process but rather with a statute which, while it might have authorized the Commission to deal with respondents in quite a different and more arbritary fashion, has in fact gone far beyond the ordinary requirements of due process to accord that degree of fairness which it is charged with denying.

It is well settled that the state may within the reasonable exercise of its police power recognize the possibilities for the practice of fraud or imposition upon its citizens through [fol. 25] the offer, advertisement, and/or sale of securities and so require all those who would vend such securities to its citizenry to first meet certain stautory requirements, having as their object the prohibition of fraudulent securities and the authorization only of those which involve no fraud, actual or potential, and then only after full disclosure of the facts. "Registration of all securities, whether good or bad, required by state blue sky laws have been upheld as no violation of the due process clause." *Jones* v. *Securities & Exchange Commission*, 79 F. 2nd 617; see also *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 61 L. Ed. 480; *Caldwell* v. *Sioux Falls Stockyards Co.*, 242 U. S. 559, 61 L. Ed. 493; *Merrick* v. *Halsey & Co.*, 242 U. S. 568 61 L. Ed. 498. Possessing this power, which proceeds from a recognition of the potential injury which may be done to the unprotected

citizens, it is manifest that such power is wholly ineffectual unless statutes, passed in its exercise, are strengthened by implements impelling their observance. Thus has the Legislature of Virginia, in our opinion, approached the problem. First, under Section 2 of the law, the term "security" is broadly defined. Under Section 3, certain of such securities are required to be qualified before an offer, advertisement, or any act in furtherance of a sale be made or undertaken in the state. Such a security is that with which we are concerned in this proceeding. It is clear that the membership certificate of the respondents is a security by definition and is such a security as is required by the law to be qualified before any attempt is made to solicit the people of Virginia. It is likewise clear from the record that no qualification has been effected and that no exemption, as contained in Section 4 of the act, is available. It is admitted that activities interdicted by the statute have been carried on and are proposed to be carried on in defiance of the statute. Under such circumstances, provision has been made by the Legislature for proceeding under Section 6 of the law, and/or in appropriate cases, for a proceeding under Section 15 of the law. Acting under the authority of Section 6, this proceeding was instituted.

Respondents insist that this proceeding is void for, through it, the Commonwealth is undertaking to extend the effect of its statutes beyond the boundaries of the state. Accordingly, we must ascertain the nature and effect of an action brought under Section 6 of the Virginia Securities Law.

"Whether a statute or law secures due process depends on the subject on which it operates and the character of the [fol. 26] rights affected thereby and regard must always be had to the character of the proceeding involved . . ." (16 C. J. S. 1153, also, see *Crane* v. *Hahlo*, 258 U. S. 142, 66 L. Ed. 514, and *Humboldt Land & Cattle Co.* v. *District Court of Sixth Judicial District*, 224 P. 612.)

Also, see *Riley* v. *Sweat*, 149 So. 48, 51, to the effect that:

"Therefore, whenever a judicial proceeding is invoked for the purpose of conserving constitutional rights as against the incidence of restrictive statutes, the test of validity is not what is set forth in the letter of the act, but how

the statute is operative in its practical application and effect."

In dealing with respondents, and others similarly situated, upon proof of the charges made, the Commission is authorized to enter a cease and desist order directing the respondents to discontinue those activities found to be in violation of the statute until such time as they may have complied therewith. The statute provides that attested copies of such order shall be forwarded by registered mail, return receipt demanded, to the respondents at the addresses to which notice of the proceeding was forwarded or to such later address or addresses as may have become known and to give such other publicity as it may see fit.

There is no element of compulsion except such as may flow from a dread of the publicity attending such an order. In such cases, the only weapon available to the Commonwealth is to publicly advise that the securities of the respondent do not bear the stamp of the state's approval and are being presented to the public without regard to the regulatory laws enacted to protect them. Section 6, *supra*, imposes no penalties, exacts no direct toll from those against whom its orders proceed. Its purpose, admittedly limited, is, after a full consideration of facts adduced in support of charges, to call on those found to be violating the provisions of the statute to halt and to fully apprise the public of Virginia that to deal further with such violators is to deal at their peril. This, we are confident, the state may properly do under its police power, which has been likened to the right of self-preservation in an individual. See *New York & N. E. R. Co.* v. *Town of Bristol*, 151 U. S. 556, 38 L. Ed. 269; *Panhandle Eastern Pipe Line Co.* v. *State Highway* [fol. 27] *Commission of Kansas*, 294 U. S. 613, 79 L. Ed. 1091. When viewed in this fashion; the constitutional principles urged upon us by the respondents present no difficulty, for while they may be appropriate to the case as outlined by them, that case is not before us.

For these reasons we believe that the respondents have seriously misconceived the natural consequences of a proceeding under Section 6 of the law and as a result have been led into error in stating in written brief of counsel: "Hence, the sole and only issue involved is whether Virginia can enjoin a resident of Nebraska while present in Nebraska, from performing acts and engaging in business

entirely lawful and proper in Nebraska, and can then hold him in contempt for violation of such injunction."

The final argument of respondents rests on the claim that the law involves an unconstitutional attempt to regulate the use of the United States' mail. We believe that our discussion of the nature and effect of actions taken under this section of the law demonstrates that no such regulation is or can be involved. Accordingly, we find no ground either in reason, principle or authority to sustain respondents' contentions and an order in accordance with this opinion and the provisions of the Virginia Securities Law will be issued.

BEFORE STATE CORPORATION COMMISSION

CERTIFICATE OF CHAIRMAN

Pursuant to an order entered herein on the 3rd day of May, 1948, the original exhibits listed therein, all of which are in the custody of the State Corporation Commission, are hereby certified to the Supreme Court of Appeals, and the said Court is respectfully requested to return the same to this Commission upon the final determination of this proceeding.

It is hereby certified to the Supreme Court of Appeals that the foregoing transcript of the record in this proceeding, when read in connection with the original exhibits hereinabove mentioned, contains and sets out all the facts and evidence upon which the action of the Commission in this proceeding was based and which are essential to a proper decision of the appeal to be taken from such action, and is also a true transcript of the proceeding and orders of the Commission of said proceeding.

Witness the signature of W. Marshall King, Chairman of the State Corporation Commission, under its seal, attested [fol. 28] by its Clerk, this 4th day of May, 1948, and in the 172nd year of the Commonwealth.

W. Marshall King, Chairman. (Seal.)

Attest: N. W. Atkinson, Clerk of the Commission.

BEFORE STATE CORPORATION COMMISSION

CERTIFICATE OF CLERK

I, N. W. Atkinson, Clerk, State Corporation Commission, do hereby certify that proper notice was given of the intention to apply for a transcript of the record in this case as the basis for appeal to the Supreme Court of Appeals of Virginia, pursuant to the provisions of Section 6339, Code of Virginia, 1919.

N. W. Atkinson, Clerk, State Corporation Commission.

A Copy—Teste: M. B. Watts, C. C.

[fols. 29-59] IN SUPREME COURT OF APPEALS OF VIRGINIA

Record No. 3425

TRAVELERS HEALTH ASSOCIATION and R. E. PRATT, as Treasurer thereof and in his personal capacity, Appellants,

against

COMMONWEALTH OF VIRGINIA, at the relation of State Corporation Commission, Appellee

Upon an appeal from and supersedeas to an order entered by the State Corporation Commission on the 5th day of January, 1948.

JUDGMENT—Jan. 10, 1949

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the order aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the order appealed from. It is therefore adjudged, ordered and decreed that the same be; and is hereby, affirmed, and that the appellants pay to the appellee thirty dollars damages and also her costs by her expended about her defense herein.

Which is ordered to be certified to the said State Corporation Commission.

[fol. 60] IN SUPREME COURT OF APPEALS OF VIRGINIA

Record No. 3425

Present: All the Justices.

TRAVELERS HEALTH ASSOCIATION, et al.

v.

COMMONWEALTH OF VIRGINIA, EX REL., &C.

From the State Corporation Commission

OPINION BY JUSTICE ABRAM P. STAPLES—January 10, 1949

This is an appeal from a cease and desist order entered by the State Corporation Commission on May 3, 1948. The order enjoined and restrained the appellants from offering, advertising, promoting, or selling certain membership certificates or contracts of indemnity or insurance in Virginia, until a permit or authorization so to do has been secured from the Commission as required by the Virginia Securities Act. (Chapter 529 of the Acts of Assembly, 1928, as amended, generally known as the Blue Sky Law. See Michie's 1942 Code of Virginia, sections 3848(47) to 3848(66) Inc.).

Section 9 of the act required every person, association, or corporation, desiring to engage in the selling or offering for sale of securities of this type in Virginia to apply for a permit so to do. Certain conditions must be complied with before a permit can be granted. Irrevocable consent [fol. 61] must be filed that action or suit may be commenced against the permittee by the service of process on the Secretary of the Commonwealth, who, in turn, is required to transmit same by mail to the permittee. The applicant is also required to provide detailed information with reference to the solvency of the issuer of the securities and with respect to various other matters relating to the propriety of permitting their sale. The Commission is authorized to conduct such investigations as it may deem appropriate, and also see to the proper application of the proceeds from the sales of the securities. There are numerous other provisions, but the foregoing are sufficient for our purposes. The appellants do not deny that their membership contracts constitute "securities" within the

meaning of the law, or that they are lawfully and properly so classified. Nor do they claim to have applied for or secured the required permit to sell them in Virginia.

Section 15 of the act (Michie's Code, section 3848(61) provides that any person violating the act, or who shall fraudulently evade or attempt to evade the provisions thereof, shall be guilty of a misdemeanor, where not otherwise provided, and punished by a fine or confinement in jail, or both. Proceedings to enforce the penalties of such [fol. 62] violations must be instituted by indictment or information in the appropriate courts of record of the State.

Section 6 of the act (Michie's Code, section 3848(52)) authorizes the State Corporation Commission, upon its own motion, or upon complaint of any resident of the State of violation of the act, to issue a cease and desist order, in the nature of a temporary injunction and restraining order against further violations, after at least ten days notice, by registered mail to persons, corporations, or associations upon whom personal service cannot be had because of absence from the State. Signed receipt of the registered notice is required to be returned by the postal authorities.

Section 17 authorizes the Commission to impose a fine not exceeding five hundred dollars for failure or refusal to comply with any lawful order made under the act.

Pursuant to section 6, *supra*, this proceeding against the appellants was instituted by order of the Commission on May 5, 1947. They were charged with offering for sale and selling the securities in question without having procured the necessary permit or authorization and in contravention of the provisions of the Virginia Securities Act. Notices of the proceeding were sent to the appellants by registered mail, and the Post Office registry receipts, filed [fol. 63] as exhibits, showed the delivery of same. The notice informed the appellants that at the time indicated they would be given an opportunity to be heard upon whether a cease and desist order would be entered against them.

The appellants appeared specially by their counsel "for the sole purpose of objecting to the alleged jurisdiction of the Commonwealth of Virginia and of its State Corporation Commission, and of moving to set aside and quash service of summons alleged to have been made upon said defendants, and for no other purpose." They challenged the jurisdiction of the State and of the State Corporation

Commission upon two broad general grounds: first, that the appellants have conducted no business activities in Virginia, but have transacted their entire business outside the State through the mails; and, second, that, the order of the Commission being in its nature *in personam,* service of notice outside the State by registered mail is not sufficient to confer jurisdiction upon the Commission to take any action with respect to the appellants. The case was heard upon a stipulation of certain facts, and also upon exhibits introduced in evidence.

After the hearing the Commission entered the order complained of. It recited the finding by the Commission [fol. 64] that the appellants had been engaging in the business of selling their securities in Virginia without complying with the Virginia Securities Act and enjoined them from continuing such activities without such compliance.

It is settled beyond controversy, and not disputed by the appellants, that the regulation of the promotion and sale of securities is a proper exercise of the police power of the States. *Virginia Brewing Co.* v. *Webber,* 167 Va. 67, 187 S. E. 447; *Watters & Martin* v. *Homes Corp.,* 136 Va. 114, 116 S. E. 366. The purpose of laws regulating such promotions and sales is to protect the public against the imposition of fraudulent or unsubstantial schemes or projects, or from being misled into the purchase of securities based upon them. Such statutes do not conflict with or violate any provisions of the Federal Constitution.. *Hall* v. *Geiger-Jones Co.,* 242 U. S. 539. Therefore, our first inquiry is directed to whether the activities of the appellants in the Commonwealth of Virginia have been such as to subject them to the State's regulatory power.

It appears from the stipulation of facts that the appellant, Travelers Health Association, is a nonprofit member- [fol. 65] ship association incorporated under the laws of Nebraska, with its home office in Omaha. Letters and other exhibits filed in the case show that the appellant, R. E. Pratt, is a resident of Omaha, is treasurer of said association, and conducts its correspondence soliciting new membership contracts. The association has not now nor has it ever had any office, officer, or agent, or any bank account or property located in Virginia. At the time of the hearing it had in force in Virginia approximately eight hundred membership certificates which provided health insurance protection in the form of sickness benefit payments. It

also admitted that it has caused many claims asserted by its Virginia members to be investigated in this State. The customary method of soliciting new memberships has been for the Virginia members of the association to recommend to it persons who they believe are likely prospects. The association then writes these persons inviting them to make application for membership. All such letters are transmitted by mail from the United States Post Office in Omaha. If upon the receipt of this letter the proposed applicant is so disposed, he fills out the application blank and sends it by mail to the home office of the association in Omaha, where it is received and acted upon.

The exhibits contained in the record include a letter from [fol. 66] appellant Pratt, as treasurer of the association, addressed to a prospective member. The letter was accompanied by an application form containing twenty-six questions to be answered by the applicant, who is instructed after he has signed it to forward it "with membership fee to R. E. Pratt, Treasurer," Omaha, Nebraska. The application contemplates reference to a named person as to the applicant's character and standing. There also appears upon the application the following:

"Money Back Guarantee"

"Our policies are issued subject to approval of the applicant. If not satisfactory they may be returned within ten days from date of issuance and all money paid thereon will be refunded promptly."

In addition to the foregoing, there was also enclosed with the letter of solicitation a separate printed "Absolute Guarantee" slip containing a provision in conformity with the one above quoted. On the face of this slip appears the following:

"Note—It is not necessary to show the name of anyone as recommending you, as you have already been recommended to us by one of our members."

On the reverse side of said guarantee slip appears a [fol. 67] printed copy of a letter from one of the members of the association residing at Baltimore, Maryland. In this letter the member in question expresses thanks for the promptness with which the association had paid benefits on account of his recent illness, and concludes with the following statement: "I am working on several of my friends to get them

to join and expect to send you several applications real soon."

The appellants insist that the foregoing facts are insufficient to show any activities on their part in Virginia which bring them within the regulatory jurisdiction of the Commonwealth. In their reply brief they state their position thus: "* * * as the Stipulation of Facts on which this proceeding is based clearly establishes, there has been no solicitation by any agent in this State and all of the activities complained of take place, not in Virginia, but at the corporate appellant's principal office in Omaha, Nebraska. It is there that all mailing is done by appellants, all applications accepted, all contracts made and all claims paid."

The stipulation shows, however, that practically all of the business of the association in Virginia originates with and is the result of the activities of its Virginia members. [fol. 68] The extent of those activities is not clearly defined, but the action of the association in mailing to prospective members a copy of the letter received by it from its Baltimore member, stating that he was working on several friends and *expected to send in their applications*, constitutes an implied invitation, not only to send in the names of persons recommended for membership, but also to solicit and send in completed applications for membership. While the old members who are engaged in these activities of assisting in procuring new members have not been technically designated as agents of the association or specifically employed to solicit for it, nevertheless, its encouragement of same and acceptance of the fruits thereof constitute a ratification of their efforts in its behalf and renders it responsible therefor. The exhibits show also that the recommendation of the prospective member which is sent to the association by the old member is accepted without question and the prospective applicant is relieved of the usual requirement of furnishing any reference at all as to his qualifications for membership. It clearly appears that the association relies almost exclusively on these activities of its Virginia members to bring about an expansion of its Virginia business.

An additional Virginia activity lies in the fact that it has been customary for the appellant association to make [fol. 69] investigations with respect to the validity of claims asserted against it arising in the State. Such investigations

obviously constitute an essential function of the health insurance business.

Remittances in payment of benefit claims are sent from Omaha, but they are received and accepted *in Virginia* as a discharge of the association's obligations. If they miscarry in the mails and are not received by the beneficiary, or, if received, are not accepted, the obligations are not discharged.

Moreover, the fact that the application is accepted in Nebraska and the membership certificate is forwarded to the Virginia applicant *subject to his approval* renders it merely an offer on the part of the association to enter into the contract with the applicant. It is not contended that the applicant has theretofore ever examined or even seen the membership certificate, and it is left entirely to him to determine, after he receives it, whether its provisions are satisfactory and he will accept it. If he is not satisfied, he returns the certificate and receives back the amount tendered in payment with his application. If on the other hand he approves the provisions of the certificate and accepts it, it is this act of acceptance in Virginia which consummates the contract.

The State Corporation Commission concluded that the [fol. 70] foregoing activities of the appellants were such as to constitute violations of the Virginia Securities Act and to bring them within the jurisdiction of the State. It therefore ordered the appellants to cease and desist from any further continuation of such violations.

The appellants, however, take the position that such activities are not sufficient to subject them to the regulatory police powers of the State as set forth in the Virginia Securities Act and in the order of the Commission. They rely upon *Minnesota Commercial Men's Association* v. *Benn*, 261 U. S. 140, and other similar cases, in support of their position that the appellant association is not engaged in business activities in Virginia such as to bring them within the jurisdiction of the courts of this State. While the facts in the *Benn* case were quite similar to those in the record before us, the action there under consideration was one brought in Montana *by a beneficiary of a contract* which was held by a Montana resident at the time of his death. A Montana statute provided that any corporation doing business therein, if no officer or agent be found in that State, could be served with summons upon the Secretary of State, "who shall be and is hereby

constituted an agent and attorney in fact to accept service on behalf of such corporation, and service upon said secre- [fol. 71] tary of state shall be deemed personal service upon said corporation." The court held that the Minnesota association was not doing business in Montana, and, therefore, the service of summons upon the Secretary of State did not constitute service upon the corporation so as to authorize the rendition of a *pecuniary civil judgment* against it.

The proceeding here before us, however, is essentially different in its nature. It was instituted, not by a contract holder, but by the Commonwealth. The appellants were being investigated by the Commission to determine whether their activities did in fact violate the Securities Act and constitute the commission in Virginia of a misdemeanor. The inquiry is quasi-criminal in its approach.

This distinction with respect to acts which violate State laws is clearly recognized in *Merrick* v. *Halsey & Co., et als.*, 242 U. S. 568. In that case a Michigan District Court of the United States had entered a decree enjoining the enforcement of the Blue Sky Law of that State against a partnership composed of residents of New York and New Jersey. They were engaged in selling stocks, bonds, and other secu- [fol. 72] rities, *by mail* to persons in the State of Michigan, though they had no place of business or agents in the State. Upon appeal the Supreme Court reversed the District Court, dissolved the injunction and sustained the power of the State of Michigan to regulate their sales of securities *through the mails.*

In *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, process in a criminal proceeding was served on a soliciting agent of the Harvester Company, which had been indicted for alleged violation of the antitrust laws of the State of Kentucky. The company contended that its activities within the State were not sufficient to subject it to the jurisdiction of the State courts. The claim of the company was that its agents were engaged exclusively in interstate commerce and, for this reason, were exempt from local regulatory control. Upon this question the court had the following to say:

"• • • The contention comes to this: so long as a foreign corporation engages in interstate commerce only, it is immune from the service of process under the laws of the state in which it is carrying on such business. This is in-

deed, as was said by the court of appeals of Kentucky, a novel proposition, and we are unable to find a decision to [fol. 73] support it, nor has one been called to our attention.

* * * * * * *

"We are satisfied that the presence of a corporation within a state necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the state, although the business transacted may be entirely interstate in its character. In other words, this fact alone does not render the corporation immune from the ordinary process of the courts of the state." (234 U. S., at pages 587, 588 and 589.)

In the foregoing case, *criminal process* had been served on an agent of the company who had not been designated as an agent to receive summons on behalf of the company, but the validity of the service was, nevertheless, sustained by the Kentucky Court of Appeals, and this was affirmed by the Supreme Court.

The principal question presented here is whether the Commonwealth has jurisdiction to regulate appellants' sale of securities through the mails, supplemented by such other activities in the State as we have described. Where such sales are in violation of the regulatory provisions and constitute a crime under the laws of the State, are the violators [fol. 74] subject to the jurisdiction of the State to punish for such violations? In other words, does the Commonwealth possess the jurisdiction and power to deal with the commission of crimes of this nature within its borders and punish same, although the transactions are principally carried on from without the State through the United States mails?

The general rule is thus stated in 14 Am. Jur., Criminal Law, section 227:

"A question often arises as to the jurisdiction of a crime where the accused, while in one state, sets in motion a force which operates in another state, as where a shot is fired at a person across a state line or an injurious substance is sent to a person in another state with intent to injure him. In such cases the view has generally been taken that actual presence in a state is not necessary to make a person amenable to its laws for a crime committed there; for if a crime

is the immediate result of his act, he may be made to answer for it in its courts, although actually absent from the state at the time he does the act. * * *."

In *Palliser* v. *United States*, 136 U. S. 514, 518, the following was said:

"When an offense is committed by means of a communi-
[fol. 75] cation through the postoffice, the sender has sometimes, as appears by the cases cited for the petitioner, been held to be punishable at the place where he mails the letter." (Citing Authorities.) "But it does not follow that he is not punishable at the place where the letter is received by the person to whom it is addressed; and it is settled by an overwhelming weight of authority that he may be tried and punished at that place, * * *." (Citing Authorities.)

United States v. *Steinberg et al.*, 62 F. (2d) 77, involved the jurisdiction of a United States District Court of New York to indict and punish a defendant who was accused of using the United States mails to defraud. The letter in question was mailed in Canada, and the defendant claimed that he had not committed any criminal act within the State of New York and that court was without jurisdiction to try the offense. In affirming a judgment of conviction by the District Court, the Circuit Court of Appeals of the Second Circuit used this language:

"* * * It has long been a commonplace of criminal liability that a person may be charged in the place where the evil results, though he is beyond the jurisdiction when he starts the train of events of which the evil is the fruit. *Strassheim* v. *Daily*, 221 U. S. 280, 284, 285, 31 S. Ct. 558, 55 L. Ed. 735; Lamar v. U. S., 240 U. S. 60, 64, 65, 66, 36 [fol. 76] S. Ct. 255, 60 L. Ed. 526; Ford v. U. S., 273 U. S. 593, 620, 621, 47 S. Ct. 531, 71 L. Ed. 793. The constitutional question is frivolous." (62 F. (2d) 78).

The Supreme Court denied a writ of certiorari to review this case. *Steinberg* v. *U. S.*, 289 U. S. 729.

Additional authorities to the effect that a person may be guilty of crime by reason of the use of the United States mails, and that the crime is deemed to be committed in the State where the mail is received and the prohibited results occur, are found in 22 C. J. S., Criminal Law, sections

134, 135. See also annotations in 42 A. L. R. 272; 43 A. L. R. 545; 141 A. L. R. 239, *et seq.*

We hold, in view of the authorities referred to, that the evidence in possession of the State Corporation Commission constituted good cause to conclude that the appellants had been engaged in selling securities in Virginia through the United States mail without complying with, and in violation of, the provisions of the applicable laws of the State.

In this situation, it seems that the Commission might have been justified in seeking an information or indictment in [fol. 77] the appropriate court in accordance with the provisions of section 15 of the Virginia Securities Act. This section provides that violation of the act constitutes a misdemeanor, punishable by a fine or confinement in jail, or both. If such information were issued by the prosecuting attorney or indictment found by the grand jury, extradition proceedings might have been had under section 6 of the Uniform Extradition Act, which was adopted by Nebraska Laws 1935, chapter 66, on May 23, 1935, and by the Acts of the General Assembly of Virginia, chapter 305, on March 28, 1940. This Uniform Act authorizes the Governor of Nebraska to grant extradition in cases where crimes are committed in another State, even though the accused was not in that State at the time of the commission of the crime and had not fled therefrom.[1]

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[1] The Uniform Extradition Act, according to the "Handbook on Interstate Crime Control," prepared by the Interstate Commission on Crime, at the time it was published in November, 1942, had been adopted in thirty-one of the States of the Union. Section 6 is as follows:

"Sec. 6. *Extradition of persons not present in demanding state at time of commission of crime.* The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom."

[fol. 78] Instead of resorting to an information or indictment, however, the Commission elected to proceed under section 6 of the Virginia Securities Act by giving notice to the appellants to show cause why a cease and desist order should not be issued by the Commission restraining them from making further sales of securities in Virginia in violation of its laws. This proceeding is somewhat analogous to the customary preliminary hearing, conducted in cases where an accused is suspected of having committed a felony, to determine whether the charge against him is supported by sufficient evidence to justify laying it before a grand jury. The chief difference is that, in the proceedings here under review, the question to be determined was whether the evidence justified a finding that the Virginia Securities Law was being violated and supported the consequent order to discontinue such violations. The Commission found that the evidence was sufficient to show that such law was being violated, and we concur in that view and in the propriety of the entry of the order requiring such discontinuance.

The appellants insist that the notice served on them by registered mail does not meet the requirements of due process because they were not present within the State and the notice was served on them in Nebraska. It may be true that the business of the appellant association in Virginia [fol. 79] has not been sufficiently extensive to justify the State in requiring it to appoint the Secretary of the Commonwealth as an agent upon whom process may be served at the suit of its Virginia contract holders. We are not called upon here to decide that question. It has been said that under some circumstances to require a corporation to defend, away from its home, a suit not arising out of its transactions in the territory of the forum might "lay too great and unreasonable a burden on the corporation to comport with due process." See *International Shoe Co.* v. *State of Washington*, 326 U. S. 310, 317.

Service of process upon nonresidents of a State by registered mail in appropriate cases is a well-established practice. We sustained the validity of a Virginia statute which imputes to one using the highways of the State an agreement that service upon such user may be had by serving the process upon the Director of the Division of Motor Vehicles of Virginia, the Director being required to send it to the nonresident defendant by registered mail at his

last known address. We held that such process so served is sufficient to bring a nonresident within the jurisdiction of a Virginia court and amenable to its judgment in a civil action arising out of the negligent use of the highways. *Carroll* v. *Hutchinson*, 172 Va. 43, 200 S. E. 644. The validity of similar State statutes has been sustained by the [fol. 80] United States Supreme Court. *Hess* v. *Pawloski*, 274 U. S. 352; *Wuchter* v. *Pizzuti*, 276 U. S. 13.

In *Wilentz* v. *Edwards*, 134 N. J. Equity 522, 36 Atl. (2d) 423, notice by mail to a nonresident of a hearing, which arose under the Blue Sky Laws of New Jersey, was sustained as conforming to the requirement of due process.

In *International Shoe Co.* v. *State of Washington, supra*, the Supreme Court sustained the jurisdiction of the Washington State courts to entertain an action for the recovery of unemployment compensation taxes arising out of salaries paid the agents of the company for their services in soliciting orders in the State, although the authority of the solicitors was strictly limited to taking orders and submitting them to the home office of the company in St. Louis, Missouri. In that case, Mr. Chief Justice Stone had the following to say:

"Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U. S. 714, 733, 24 L. Ed. 565. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due proc- [fol. 81] ess requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' • • •

• • • • • • •

"'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of

process has been given. * * *." (326 U. S. 310, 316-317).

And in connection with the question whether the substituted service gives reasonable assurance that the notice will be actual, the opinion continues:

"* * * Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit. * * *." (326 U. S. 320).

We think the service of the notice by registered mail with the return postal receipt showing its delivery as required by the statute meets the requirements laid down [fol. 82] in the *International Shoe Co.* case. The only complaint which the appellants are called upon to answer in the proceeding prescribed by the statute is one involving the question of their violation of the laws of Virginia with respect to the sale of their securities. This is a question which cannot be tried by any tribunal save those of this State, and therefore the appellants are subjected to no undue inconvenience.

Nor do we think the proceedings instituted by the Commission offend "traditional notions of fair play and substantial justice." As we have pointed out, the Commission might have undertaken to proceed against the appellants by information or indictment and extradition. The present proceeding is a very much less onerous one and is more favorable to the appellants, in that they are afforded an opportunity, without being subjected to a criminal trial, to have determined by the Commission, by this court, and also by the Supreme Court of the United States, if they so desire, the question whether their conduct has been such as to violate the criminal laws of the State and subject them to the process of its courts.

Appellants also contend that the Virginia securities law, as applied by the Commission, is an unconstitutional at- [fol. 83] tempt to regulate the use of the United States mails. We do not so construe the act. The effect of the order is to restrain the appellants from using the United States mails in such manner as to commit a criminal act in the State of Virginia. We do not believe it can be successfully contended that the postal service, which was established and is operated by the States in their joint capacity

as the Government of the United States, can be held to operate as a shield to protect persons in the commission of crime in any of the several States, nor has any authority in support of such a proposition been called to our attention.

Appellants also take the position that Subchapter I of Chapter 2A of Title 15 of the United States Code, Annotated, manifests an intention by Congress, through the Securities Exchange Commission, to occupy the field of regulating the sale of domestic securities to the exclusion of the States. Section 77r, however, provides as follows:

"Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person."

[fols. 84-85] It was clearly the intention of Congress to leave the States free to exercise such regulatory control over the sale of securities as does not conflict with the provisions of the Federal Act, and, in the absence of such a conflict, it is contemplated that the States and the Federal Government shall exercise concurrent jurisdiction in this field. The appellants have not pointed out any such conflict and we have been unable to discover any.

On the whole case, we are of opinion to affirm the order of the Commission.

Affirmed.

[fol. 86] IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND

[Title omitted]

Petition for Appeal to the Supreme Court of the United States, Assignments of Error and Prayer for Reversal

To the Honorable Edward W. Hudgins, Chief Justice of the Supreme Court of Appeals of Virginia:

I

PETITION FOR APPEAL.

Travelers Health Association, a non-profit Nebraska corporation, and R. E. Pratt, a resident of Nebraska as Treasurer thereof, and in his personal capacity, the Ap-

pellants herein, considering themselves aggrieved by the final judgment of the Supreme Court of Appeals of the [fol. 87] State of Virginia dated and entered on the 10th day of January, 1949, in the above entitled cause affirming the final order of the State Corporation Commission of Virginia rendered January 5, 1948, permanently restraining the Appellants, through the mails or otherwise, from further advertising for sale, offering for sale, and/or selling within the State of Virginia contracts of insurance and/or indemnity until a permit or authorization therefor shall have been issued by the State Corporation Commission of Virginia, present this petition within ninety days after January 10, 1949, as required by Section 2101(c) of the Judicial Code and Judiciary, approved June 25, 1948, effective September 1, 1948 (Title 28, U. S. C., Section 2101(c)), and respectfully show:

(1) That the said final judgment was rendered by the highest court of the state in which a decision could be had, in which there was drawn in question the validity of a statute of the State of Virginia on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity;

(2) That the said statute, the validity of which was so drawn in question, was an Act of the General Assembly of Virginia, approved March 23, 1932 (Acts of the General Assembly of Virginia, 1932, Chapter 236, page 434; Section 3848(52) of Michie's 1942 Code of Virginia), which is an amendment and re-enactment of Section 6 of what is generally known as the Virginia Blue Sky or Virginia Securities Law and herein called "Virginia Securities [fol. 88] Law" (Acts of the General Assembly of the State of Virginia, 1928, Chapter 529, page 1373; Sections 3848 (47) *et seq.* of Michie's 1942 Code of Virginia).

(3) That said Section 6 of the Virginia Securities Law authorizes the issue of cease and desist orders in the nature of permanent injunctions by the State Corporation Commission of Virginia against all individuals, corporations and associations, including those not domesticated or otherwise present, residing or doing business in the State, that are found to be violating the provisions of said Virginia Securities Law upon hearings held pursuant to orders of the State Corporation Commission, issued upon its own motion or at the instance of any resident of this State, to

show cause why such cease and desist orders should not issue against such persons. Section 6 further provides that jurisdiction may be had over such non-resident persons, and notice of the hearing given them through the medium of at least 10 days' notice by registered mail to their out-of-state addresses or by publication of a notice in the manner prescribed in the statute;

(4) That the grounds of the asserted invalidity of said statute here are that, as applied to the Appellants in this case, it was repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States and Clause 7, Section 8, Article I, of said Constitution, granting to Congress the exclusive control of the United States Mails;

[fol. 89] (5) That therefore the Appellants respectfully show the Court that this case is one in which, under Section 1257(2) of the Judicial Code and Judiciary, approved June 25, 1948, effective September 1, 1948 (Title 28, U. S. C., Section 1257(2)), a review may be had in the Supreme Court of the United States by appeal.

Wherefore, Appellants pray for an allowance of an appeal from the aforesaid final judgment to the Supreme Court of the United States, and upon Appellants giving bond in an amount to be fixed by this Court that the said appeal may operate as a supersedeas and may suspend, during the pendency of said appeal, the effect of the aforesaid restraining order of the State Corporation Commission.

II

Assignment of Error

The appellants assign the following errors in the record and proceedings in said case:

(1) That the Supreme Court of Appeals of Virginia erred in giving judgment affirming the final order of the State Corporation Commission rendered January 5, 1948, and thereby sustaining the validity of Section 6 of said Virginia Securities Law (Section 3848 (52), Michie's 1942 Code of Virginia).

(2) That the Supreme Court of Appeals of Virginia erred in failing to hold that the issuance of a cease and desist

order in the nature of a permanent injunction against Ap- [fol. 90] pellants, under and in pursuance of Section 6 of the said Virginia Securities Law, deprived the Appellants of their liberty and property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

(3) That the Supreme Court of Appeals of Virginia erred in failing to hold that the enforcement of Section 6 of said Virginia Securities Law against Appellants constituted illegal and unlawful interference with the use of the United States Mails, the exclusive control and regulation of which is delegated exclusively to the Congress by Clause 7, Section 8, Article I, of the Constitution of the United States.

III

Prayer for Reversal

For which errors the Appellants, Travelers Health Association, and R. E. Pratt, as Treasurer thereof, and in his personal capacity, pray that the said judgment of the Supreme Court of Appeals of Virginia dated and entered the 10th day of January, 1949, in the above entitled cause, be reviewed and reversed, and that judgment be rendered in favor of the Appellants and for costs;

Appellants further pray that the Clerk of the Supreme Court of Appeals of the State of Virginia be directed to prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within a time to be fixed as required by law.

[fols. 91-92] Appellant, Travelers Health Association, herewith tenders a cost and supersedeas bond in such sum as the Court may require.

This the 7th day of April, 1949.

Travelers Health Association and R. E. Pratt, as Treasurer thereof, and in his personal capacity, Appellants, by Thomas B. Gay, H. Merrill Pasco, Counsel for Appellants.

Filed April 7, 1949. M. B. Watts, Clerk.

[fol. 93] IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND

[Title omitted]

ORDER ALLOWING APPEAL TO THE SUPREME COURT OF THE UNITED STATES

The Appellants in this cause having prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of Appeals of the State of Virginia on the 10th day of January, 1949, and from each and every part thereof and having prayed and filed its petition for an appeal, assignments of error and prayer for reversal, pursuant to the statute and to the Rules of the Supreme Court of the United States in such case made and provided, it is hereby

Ordered that the appeal be, and the same is hereby, al-[fols. 94-95] lowed to the Supreme Court of the United States from the Supreme Court of Appeals of the State of Virginia in the above entitled cause, as provided by law, and it is further

Ordered that the Clerk of the Supreme Court of Appeals of the State of Virginia shall prepare and certify a transcript of the record, proceedings and judgment in this cause, and transmit same, together with all papers filed, in accordance with the rules of the Supreme Court of the United States, to the Supreme Court of the United States, so that he shall have the same in said Court within not exceeding forty (40) days from this date and the date of signing the citation.

The Appellant, Travelers Health Association, having tendered and filed a cost and supersedeas bond with good and sufficient surety, conditioned as required by law in such cases made and provided, and in the sum of $1,000.00, said bond is accordingly hereby approved.

Edward W. Hudgins, Chief Justice, Supreme Court of Appeals of the State of Virginia.

April 8th, 1949.

[fols. 96-98] Citation in usual form showing service on J. Lindsay Almond, Jr., omitted in printing.

[fols. 99-103] Cost and supersedeas bond on appeal for 1,000.00 approved April 8, 1949, omitted in printing.

[fol. 104] IN THE SUPREME COURT OF APPEALS OF VIRGINIA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Supreme Court of Appeals of Virginia:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of the record the following, and no other papers and exhibits, to-wit:

(1) The petition of Travelers Health Association and R. E. Pratt, as Treasurer thereof and in his personal capacity, to the Supreme Court of Appeals of Virginia from the order of the State Corporation Commission of January 5, 1948, including Statement of the Facts, Assignments of Error and Statement of Position.

[fol. 105] (2) The order of the State Corporation Commission of Virginia dated May 5, 1947.

(3) The notice of special appearance before the State Corporation Commission of Travelers Health Association and R. E. Pratt, as Treasurer thereof, and in his personal capacity.

(4) The exhibits introduced in evidence, including all statements of counsel before the State Corporation Commission on September 18, 1947.

(5) The stipulation of facts dated September 2, 1947.

(6) The final order of the State Corporation Commission in the form of a Cease and Desist order in the nature of a permanent injunction under Section 6 of the Virginia Securities Law dated January 5, 1948.

(7) The opinion of the State Corporation Commission by Downs, Commissioner.

(8) The opinion and judgment of the Supreme Court of Appeals of the State of Virginia dated and filed January 10, 1949.

(9) The petition for an appeal from the Supreme Court of Appeals of Virginia to the United States Supreme Court.

(10) Assignments of error and prayer for reversal.

(11) The order of the Chief Justice of the Supreme Court of Appeals of Virginia allowing the appeal and fixing and [fol. 106] approving the cost and supersedeas bond.

(12) The citation.

(13) The cost and supersedeas bond.

(14) All papers filed by the parties under the requirement and authority of Rule 12 of the Rules of the Supreme Court of the United States.

(15) This praecipe with proof of service.

(16) Your certificate certifying the correctness of the transcript.

Said transcript to be prepared as required by law and the Rules of the Supreme Court of Appeals of Virginia, and the Rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States, at Washington, on or before the 18th day of May, 1949.

Dated this 8th day of April, 1949.

Thomas B. Gay, H. Merrill Pasco, Attorneys for the Appellants.

Service of the above praecipe accepted and acknowledged this 11th day of April, 1949.

J. Lindsay Almond, Jr.

[fols. 107-108] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 109] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED ON AND OF PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF, AS REQUIRED BY RULE 13, PARAGRAPH 9.—Filed May 19, 1949

Comes now the Appellants in the above entitled cause and state that the points upon which they intend to rely in this Court are as follows:

Point 1. That the Supreme Court of Appeals of Virginia erred in giving judgment affirming the final order of the State Corporation Commission rendered January 5, 1948, and therein sustaining the validity of Section 6 of the Virginia Securities Law (Section 3848(52), Michie's 1942 Code of Virginia).

Point 2. That the Supreme Court of Appeals of Virginia erred in failing to hold that the issuance of a cease and desist order in the nature of a permanent injunction against [fol. 110] Appellants, under and in pursuance of Section 6 of the said Virginia Securities Law, deprived the Appellants of their liberty and property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

Point 3. That the Supreme Court of Appeals of Virginia erred in failing to hold that the enforcement of Section 6 of said Virginia Securities Law against Appellants constituted illegal and unlawful interference with the use of the United States Mails, the exclusive control and regulation of which is delegated exclusively to the Congress by Clause 7, Section 8, Article I, of the Constitution of the United States.

Appellants respectfully represent that the whole of the record, as filed, is necessary for the consideration of the above mentioned points.

Travelers Health Association and R. E. Pratt, as Treasurer thereof, and in his personal capacity, Appellants. By Thomas B. Gay, H. Merrill Pasco, Counsel for Appellants.

Service of the foregoing statement of the points to be relied on by Appellants and of the parts of the record it [fol. 111] thinks necessary for the consideration thereof pursuant to Rule 13, paragraph 9, is hereby accepted and

the receipt of a copy thereof is hereby acknowledged for and on behalf of the Commonwealth of Virginia, Appellee, this 12th day of May, 1949.

J. Lindsay Almond, Jr., Attorney General.

[fol. 112] [File endorsement omitted]

[fol. 113] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—June 13, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary docket.

Endorsed on Cover: File No. 53,804. Virginia Supreme Court of Appeals, Term No. 76. Travelers Health Association and R. E. Pratt, as Treasurer thereof, and in his personal capacity, Appellants, vs. Commonwealth of Virginia, at the relation of State Corporation Commission. Filed May 19, 1949. Term No. 76 O. T. 1949.